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Panel Says Laws Hinder Security Leak Prosecutions

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The Senate Intelligence Committee has concluded that there has been a "major failure" by the government to take action in leaks of national security information, and that new laws and regulations are needed to permit future prosecution of both leaks and espionage cases.

According to a report released yesterday by the Subcommittee on Secrecy and Disclosure, the committee has been "unable to identify a single successful prosecution of an individual who leaked information to a publication," and has found cases where espionage prosecutions had been hampered.

The chief reason, according to the report, is that defendants in such cases often have engaged in "graymail" — which a committee spokesman described as "something just short of blackmail" — by threatening to disclose even more secrets in open court if a prosecution were attempted.

TERMING THIS practice "a shocking phenomenon which undermines the enforcement of all laws related to intelligence operations," Sen. Joseph R. Biden Jr., D-Del., the subcommittee chairman, said that unless steps are taken to correct this, it will not be possible to enforce laws now being drafted to govern the nation's intelligence agencies.

His point, he said both in a written statement and in a short news conference yesterday is that the same reasons cited by the government for not prosecuting many cases in which intelligence secrets have been compromised also could be cited to block prosecutions of intelligence agents who violate criminal laws.

The report, which is largely the work of three present and former committee staffers, Keith Rafael, Mark Gitenstein and David Bushong, shows that in addition to so-called "national security" leak cases, there have been investigations of bribery, drug dealing and murder — including the initial investigation of Korean influence buying — that have been abandoned for fear that prosecu-

tions would compromise intelligence sources and methods."

IN ALL SUCH cases, the report says, the common thread has been that the government has pulled back from prosecution after intelligence officials warned that the benefits gained by a prosecution would be outweighed by the harm caused in submitting classified information for use in a public trial.

In fact, the report says, the government in the past has been least willing to prosecute when the leak was the most serious, because it did not want to confirm to other nations that the information was authentic or to disclose in court precisely why its release was considered harmful to national security.

"Indeed, the more sensitive the information compromised, the more difficult it becomes to enforce the laws that guard our national security," it says.

Biden said yesterday that the committee rejected proposals to re-write espionage laws along the lines of the British Official Secrets Act, which makes revelation of any official government information a crime, whether it is linked to the "national security" or not.

It did, however, recommend a series of administrative actions and laws that it says will afford more protection to undercover operatives of the CIA, reduce the impact of "graymail" and make it more feasible for the Justice Department to attempt prosecution of cases involving "national security" leaks.

INCLUDED AMONG the recommendations — which the report said could be taken "while the Congress determines the need for major revisions of the espionage statutes" — are the following:

- A new law to provide "limited further protection of intelligence sources, especially the identities of agents and employees under cover." The report said such a law is needed to protect the names of actual CIA officers and agents, such as were revealed by former CIA officer Philip Agee. Biden, however, said he wasn't sure whether this also would apply to identification of persons such as King Hussein of Jordan, who was reported last year to have received considerable sums of money from the agency.

- Special omnibus pre-trial proceedings, in which defense lawyers would have to tell prosecutors in advance just what sorts of defenses they intend to raise that would result in public airing of classified material. This would allow judges to rule in advance whether the material was relevant or admissible, and thus put the government on notice as to just what it would and would not have to reveal in order to prosecute the case.

- A greater use of administrative sanctions against government employees for security breaches which do not constitute crimes. This could include withdrawal of pension rights of former employees who reveal classified information after they leave the government.

In addition, the committee said that the executive branch of the government should move quickly to decrease "the amount of unnecessary secrecy," and to declassify material which can legitimately be made public.